

Virginia Federal Court Applies Broad Reading of Military Lending Act's Statute of Limitation in Dismissal of Borrower Class Action

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In *Wood v. Omni Financial of Nevada, Inc.*, the plaintiffs filed a class action complaint alleging violations of the Military Lending Act (MLA). Specifically, the plaintiffs, two active duty service members who had entered into multiple installment loans with the defendant, alleged that the defendant violated the MLA by unlawfully: 1) extending loans with interest rates that exceeded the military annual percentage rate of interest (MAPR); 2) extending loans that rolled over prior loans; 3) requiring plaintiffs to establish an allotment to repay the loan as a precondition to receiving funding; and 4) requiring plaintiffs to provide a security interest in their bank account as a condition for receiving the loans. The court disagreed with the plaintiffs' assertions and granted the defendant's motion to dismiss for failure to state a claim.

As the court noted in its opinion, the plaintiffs were not the first to allege that Omni Financial had violated the MLA. In 2020, the Consumer Financial Protection Bureau entered a consent order against Omni Financial for requiring service members to repay loans by allotments. The CFPB further found that Omni Financial violated the Electronic Fund Transfer Act by requiring borrowers to provide bank account and routing information and preauthorize electronic transfers on the scheduled date of payment in the event of a default under the primary payment method. As a term of the consent order, Omni Financial was enjoined from requiring allotments or preauthorizing electronic transfers as a financing condition to service members.

Unfortunately for the plaintiffs, the court found that most of their claims were time-barred by the MLA's two-year statute of limitations period. The parties disagreed about whether "discovery by the plaintiff of the violation," which triggers the MLA limitations period, required that a plaintiff only discover the facts constituting the basis for the violation, as the defendant argued, or instead requires that a plaintiff also know that the MLA was violated, as the plaintiffs argued. The court agreed with the parties that the text of the MLA was not conclusive. The defendant pointed to the Fair Credit Reporting Act (FCRA), which contains an identical statute of limitations as the MLA, for instruction. The court found that all the courts that have considered this question under FCRA have found that knowledge of the law is not required to trigger the limitations period. Specifically, the court stated that it "has been unable to find any decision holding that the FCRA's two-year period begins to run only when a plaintiff knows that the FCRA has been violated." Beyond FCRA, the court found that interpreting discovery of the violation in the MLA as requiring only discovery of the facts constituting the violation is consistent with jurisprudence on identical or similar statutory discovery rules and furthers the policies underlying statutes of limitations by preventing plaintiffs from sleeping on their rights and prohibiting the prosecution of stale claims. In so holding, the court found

most of the plaintiffs' loans fell out of this two-year period.

For the loans that were entered into within the applicable limitations period, the court found that the plaintiffs failed to state a claim. As for the plaintiffs' claim that Omni Financial violated the MLA by unlawfully rolling over prior loans, the court found that the plaintiffs failed to allege that the defendant was a "creditor" within the terms of the narrower definition used by the MLA in its roll-over provision. Under that provision, creditor is defined as an entity "engaged in the business of extending consumer credit subject to applicable law to engage in deferred presentment transactions or similar payday loan transactions (as described in the relevant law) ..." The court found that the plaintiffs failed to provide any factual allegations that the defendant engaged in payday lending or deferred presentment transactions and granted the motion to dismiss as to that count.

Since the court found that the applicable loans were not repaid by allotment, the only remaining issue before the court was whether Omni Financial violated the MLA by requiring the plaintiffs to grant a security interest in their bank accounts. Specifically, the plaintiffs alleged that they were required to give Omni Financial a copy of their end of month Leave and Earnings Statements, which identified the bank accounts in which their pay was deposited and required the plaintiffs to use that same bank account for a preauthorized electronic fund transfer. Importantly, however, the plaintiffs failed to allege that the MAPR on the relevant loans exceeded 36%. The MLA allows for preauthorized electronic fund transfers when the loans do not exceed a 36% MAPR. "Because a creditor is not prohibited from taking a security interest in the form of accessing a bank account by way of preauthorized electronic fund transfer so long as the MAPR does not exceed 36%," and the plaintiffs did not address this issue, the court granted the motion to dismiss on that claim.

The court further denied the plaintiff's request for leave to file a second amended complaint.

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